UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOANNA A., individually and on behalf of her minor child J.A.,

Plaintiffs,

V.

MONROE TOWNSHIP BOARD OF EDUCATION; NEW JERSEY DEPARTMENT OF EDUCATION; KEVIN DEHMER, INTERIM COMMISSIONER OF EDUCATION; NEW JERSEY OFFICE OF ADMINISTRATIVE LAW; ELLEN S. BASS, CHIEF ADMINISTRATIVE LAW JUDGE; JEFFREY R. WILSON, ADMINISTRATIVE LAW JUDGE; JOHN S. KENNEDY, ADMINISTRATIVE LAW JUDGE; CATHERINE A. TUOHY, ADMINISTRATIVE LAW JUDGE; AND DOES 1 – 250 SIMILARLY SITUATED ADMINISTRATIVE LAW JUDGES,

Defendants.

No. 1:21-cv-06283-NLH-MJS

OPINION

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HILLMAN, District Judge

Currently before the Court is the State Defendants'[1] Motion to Dismiss Plaintiffs'[2] Complaint (ECF 33). For the reasons that follow, the State Defendants' motion will be granted in part and denied in part.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

For purposes of this motion to dismiss, the Court takes the facts alleged in the complaint as true and will only recount those salient to the instant motion. J.A. is a disabled child who was receiving special education services from Monroe

[1] The State Defendants the New Jersey Department of Education ("NJDOE"), the Commissioner of Education, the New Jersey Office of Administrative Law ("NJOAL"), and the Administrative Law Judges ("ALJ") that presided over the underlying due process matters: ALJ Ellen Bass, ALJ Jeffrey R. Wilson, ALJ John S. Kennedy, ALJ Catherine A. Tuohy, as well as DOEs 1-250 "Similarly Situated" ALJs. (See ECF 33).

[2] Plaintiffs are Joanna A., individually and on behalf of her minor child J.A. (See generally ECF 1).

Township Board of Education ("MTBOE"). (ECF 1 at 51). Plaintiffs allege that J.A. was diagnosed with Autism and apraxia when she was a toddler. (Id.) Despite submitting the opinions of more than one medical practitioner who confirmed J.A.'s diagnoses and recommended services, MTBOE declined to provide them during J.A.'s kindergarten and first grade years at school.[3] (Id. at 51-52). Later, in 2015, Plaintiffs took J.A. for a further medical evaluation where it was determined that she had severe auditory processing disorder. (Id. at 53). MTBOE accepted the diagnosis but refused to provide services. (Id. at 54).

Plaintiffs alleged that MTBOE did prepare an Individualized Educational Program ("IEP") for J.A.'s third grade year but that it was subpar in terms of J.A.'s education needs.[4] (Id. at 55-57). J.A.'s mother accepted the plan because she felt that there was no other option. (See id. at 57). A further IEP session was held that fall, and though a revised education plan was established, J.A.'s mother felt that her input was not valued. (Id. at 59-60).

[3] Related to these diagnoses during this time, Plaintiffs filed two due process complaints against MTBOE. (Id. at 52). One settled and Plaintiffs lost the other case. (Id.) That second case has been appealed and is currently before this Court. (See Civil No. 1:20-cv-09498-NLH-MJS).

[4] The complaint notes that there might have been another IEP meeting during the winter of the school year. (Id. at 63).

The complaint also alleges that that year J.A.'s mother had been visiting the school in order to observe J.A. and MTBOE informed her that her visits would be limited. (Id. at 61). At the next IEP meeting, J.A. was provided with a plan for the next school year, the fourth grade, that included even fewer services than the prior year.[5] Because of the lack of services, Plaintiffs ultimately switched J.A. to homebound schooling, where she has been ever since. (Id. at 76).

On May 24, 2017, Plaintiffs filed a due process complaint against MTBOE with the NJDOE. (Id. at 77). The case was not resolved during mediation, and it was later transferred to the OAL for a hearing. (Id. at 78). Plaintiffs allege that though they were entitled to a hearing within approximately ten days of that transmittal, ALJ Beaver held a settlement conference instead. (Id. at 79). That day was one of the OAL's "Settlement Thursdays", where the OAL would hold settlement conferences rather than hearings as required by law. (See id.) In addition, Plaintiffs were never told that the session with ALJ Beaver would be a settlement conference rather than a hearing when the case was transmitted from the NJDOE to the OAL. (Id.) Thereafter, because the parties did not settle, the

[5] In addition, because of a pending due process complaint, J.A. was supposed to be receiving the same services from the prior year. The complaint pleads that J.A. did not receive those services.

matter was transferred to ALJ Wilson to hold a hearing, who set the hearing date for months out into the future, despite there being no adjournment request by the parties. (Id. at 80). In October 2017, ALJ Wilson executed a pre-hearing order which advised the parties that if discovery materials were not exchanged at least five days prior to the hearing, those materials would be excluded upon application of a party (the "Five Day Exchange Rule"). (Id. at 81).

Plaintiffs allege that the hearing was not scheduled until January 8, 2018, 203 days after the period for mediation at the NJDOE had ended and the case was to be transferred to the OAL. (Id. at 82). Further, Plaintiffs sought to amend their due process complaint upon retaining counsel in November 2017, but ALJ Wilson did not rule on that motion, which was ultimately denied on May 1, 2018. (Id. at 86). Plaintiffs allege that they sent a letter that morning asking about the status of the motion and that ALJ Wilson issued an order denying that motion later that day in retaliation for pointing out his violation of the timelines for resolving due process complaints. (Id.)

Plaintiffs filed another due process complaint on May 22, 2018, alleging further misconduct by MTBOE since the last one had been filed. (Id.) ALJ Wilson scheduled a hearing on the first due process complaint on June 11, 2018. However, because Plaintiffs in the interim had filed a putative class action

naming him as a defendant, ALJ Wilson recused himself and was replaced by ALJ Kennedy. Both due process complaints were consolidated over the summer of 2018 and set for a hearing on October 1, 2018.[6] Plaintiffs alleged that MTBOE produced materials only four days before the hearing in violation of the Five Day Exchange Rule. (Id. at 90). Plaintiffs moved to exclude that evidence but ALJ Kennedy denied the motion. (Id. at 91).

Plaintiffs filed an interlocutory appeal which was before the undersigned and which the undersigned denied without prejudice pending the completion of the hearing. (Id. at 92). Before the matter was remanded to the OAL, Plaintiffs learned of ex parte communications between ALJ Kennedy and MTBOE and demanded that ALJ Kennedy recuse himself. (Id. at 93). ALJ Kennedy did so and was replaced by ALJ Tuohy in July 2020. (Id.) ALJ Tuohy then conducted another status conference rather than a hearing. (Id. at 94). ALJ Tuohy did not hold a hearing until the fall and then issued her opinion on February 22, 2021. (Id. at 97).

Plaintiffs originally filed this case before this Court on May 23, 2021. (Id.) The complaint contains counts against MTBOE and counts against some or all of the State Defendants.

[6] The second due process complaint was originally assigned to ALJ Bass when it was transferred from the NJDOE to the OAL. (Id. at 88).

The court will now recount the Counts that name the State Defendants as those are the ones relevant to this motion to dismiss. They are: Count II (legal error in the first due process case against the State Defendants), Count III (systemic violation of the ten day peremptory hearing date against the State Defendants), Count IV (systemic violation of the Five Day Exchange Rule by the State Defendants), Count V (systemic violation of the adjournment rule by the State Defendants); Count VI (systemic violation of the 30 day resolution period by the State Defendants); Count VII (systemic violation of the access to records procedural safeguard by the State Defendants); Count VIII (systemic violation of discovery rules by the State Defendants); Count IX (systemic violation of the rules of evidence by the State Defendants); Count X (systemic violation of the hearing officer qualifications by the State Defendants); Count XI (systemic violation of the independence of the adjudicating body of special education disputes by the State Defendants); Count XII (systemic violation of the 45 Day Rule by the State Defendants); Count XIII (federal preemption against the State Defendants); Count XVII (violation of § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, et seq., by All Defendants except MTBOE and Doe ALJs 1-250); Count XVIII (violation of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (the "ADA") by All Defendants

except MTBOE and Doe ALJs 1-250); Count IXX (systemic civil rights violations under 42 U.S.C.§ 1983 by the State Defendants); and Count XX (systemic malicious abuse of process by the State Defendants). Instead of attacking the complaint count by count, the State Defendants organize their motion to dismiss around certain legal theories and arguments. Thus, the Court will address the motion to dismiss by proceeding through the State Defendants' arguments rather than going count by count.

BACKGROUND

I. The IDEA

Though Plaintiffs state claims under laws other than the IDEA, the thrust of their complaint revolves around the defendant's failure to honor their responsibilities under the IDEA. Therefore, the Court will provide some color on the IDEA as a statutory and regulatory scheme. Congress enacted the IDEA to, among other things, ensure "the rights of children with disabilities and parents of such children are protected[.]" 20 U.S.C. § 1400(d)(1)(A)-(B). The IDEA requires that every child with a disability receive a free appropriate public education (a "FAPE") from their public school if that school receives federal funding under the IDEA. Id. at § 1412(a)(1)(A); 34 C.F.R. § 300.101(a). The term "free appropriate public education" means the provision of "special education and related services" that

meet certain criteria. 20 U.S.C. § 1401(9). The IDEA also guarantees parents of disabled children a right to participate in the educational programming offered to their children.

To ensure that public schools adequately provide a FAPE and that the rights of disabled students and their parents are not infringed, Congress enacted various "procedural safeguards" that participating public schools must comply with. Id. at § 1412(6)(A); id. at § 1415(a). One such procedural safeguard provides standards for adjudicating disputes about whether a school has adequately provided a FAPE. Per Congress' requirements, these disputes begin with the filing of a "due process petition" or "due process complaint." Either the public school or the child may file a due process complaint, and that complaint may seek relief with respect to "any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." Id. at § 1415(b)(6).

The IDEA contemplates that it is the State Educational Agency that is responsible for making sure that there are fair and impartial procedures in place to handle any due process petition. Id. at §1415 (f)(1)(A) ("Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall

be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency."); id. at §1415(e)(1) ("Any State educational agency or local educational agency that receives assistance under this subchapter shall ensure that procedures are established and implemented to allow parties to disputes involving any matter.").

Once a due process complaint has been filed, Congress has set strict deadlines by which certain events must occur. See Id. at § 1415(f)(1)(B)(ii) (referencing timelines "applicable [to] a due process hearing"); 34 C.F.R. § 300.515(a) (setting forth a strict timeframe for due process petition resolution); N.J.A.C. 6A:14-2.7(j) (same). These procedures are central to the instant matter. Beginning with the date the due process complaint is filed, the parties have thirty days within which to settle or otherwise resolve the dispute to the satisfaction of the parent and child. See 20 U.S.C. § 1415(f)(1)(B); 34 C.F.R. § 300.510(b). This period is referred to as the "resolution period."

If the case is not resolved during the resolution period, it may proceed to a hearing. Congress has called these "due process hearings." In New Jersey, "[a] due process hearing is an administrative hearing conducted by an administrative law judge" in the OAL. N.J.A.C. 6A:14-2.7(a). "If the local

educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this subchapter shall commence" 20 U.S.C. § 1415(f)(1)(B)(ii); 34 C.F.R. § 300.510(b); see N.J.A.C. 6A:14-2.7(j) ("A final decision shall be rendered by the administrative law judge . . . after the conclusion of the resolution period").

Once the 30-day resolution period ends, federal regulations require that due process petitions be decided by hearing officers within 45 days, unless either party requests specific adjournments. 34 C.F.R. § 300.515(a) (states receiving federal funding "must ensure that not later than 45 days after the expiration of the 30 day period under § 300.510(b) . . . (1) A final decision is reached in the hearing; and (2) A copy of the decision is mailed to each of the parties."). New Jersey's Administrative Code contains a similar requirement. N.J.A.C. 6A:14-2.7(j) ("[a] final decision shall be rendered by the administrative law judge not later than 45 calendar days after the conclusion of the resolution period[.]")

Both federal and New Jersey State law permit "specific adjournments" to be granted "at the request of either party" which will effectively toll the 45-day period within which a decision must be entered. See N.J.A.C. 6A:14-2.7(j) (45-day

period may only be extended if "specific adjournments are granted by the administrative law judge in response to requests by either party to the dispute"); 34 C.F.R. § 300.515(c) ("[a] hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party."). No other delays are contemplated. Therefore, if no specific adjournments are requested by the parties, a final decision must be rendered within 45 days after the end of the 30-day resolution period. 34 C.F.R. § 300.515(a); N.J.A.C. 6A:14-2.7(j). The Court refers to this requirement as the "45 Day Rule." With that overview, the Court turns to Plaintiffs' allegations.

DISCUSSION

I. Subject Matter Jurisdiction

This Court exercises subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and § 1367.

II. Standard of Review

When considering a motion to dismiss a complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), a court must accept all well-pleaded allegations in the complaint as true and view them in the light most favorable to the plaintiff. Evancho v. Fisher, 423 F.3d 347, 351 (3d Cir. 2005). It is well settled that a pleading is sufficient if it contains "a short

and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do . . . ." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (alteration in original) (citations omitted) (first citing Conley v. Gibson, 355 U.S. 41, 47 (1957); Sanjuan v. Am. Bd. of Psychiatry & Neurology, Inc., 40 F.3d 247, 251 (7th Cir. 1994); and then citing Papasan v. Allain, 478 U.S. 265, 286 (1986)).

To determine the sufficiency of a complaint, a court must take three steps: (1) the court must take note of the elements a plaintiff must plead to state a claim; (2) the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth; and (3) when there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief. Malleus v. George, 641 F.3d 560, 563 (3d Cir. 2011) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 664, 675, 679 (2009) (alterations, quotations, and other citations omitted).

A district court, in weighing a motion to dismiss, asks "not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claim." Twombly, 550 U.S. at 563 n.8 (quoting Scheuer v. Rhoades, 416 U.S. 232, 236 (1974)); see also Iqbal, 556 U.S. at 684 ("Our decision in Twombly expounded the pleading standard for 'all civil actions' . . . ."); Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (3d Cir. 2009) ("Iqbal . . . provides the final nail in the coffin for the 'no set of facts' standard that applied to federal complaints before Twombly."). "A motion to dismiss should be granted if the plaintiff is unable to plead 'enough facts to state a claim to relief that is plausible on its face.'" Malleus, 641 F.3d at 563 (quoting Twombly, 550 U.S. at 570).

A court in reviewing a Rule 12(b)(6) motion must only consider the facts alleged in the pleadings, the documents attached thereto as exhibits, and matters of judicial notice. S. Cross Overseas Agencies, Inc. v. Kwong Shipping Grp. Ltd., 181 F.3d 410, 426 (3d Cir. 1999). A court may consider, however, "an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document." Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993). If any other matters outside the pleadings are presented

to the court, and the court does not exclude those matters, a Rule 12(b)(6) motion will be treated as a summary judgment motion pursuant to Rule 56. Fed. R. Civ. P. 12(b).

Rule 12(b)(1) governs the State Defendants' motion to the extent it challenges Plaintiffs' action on standing and immunity grounds. "A challenge to subject matter jurisdiction under Rule 12(b)(1) may be either a facial or a factual attack." Davis v. Wells Fargo, 824 F.3d 333, 346 (3d Cir. 2016). "The former challenges subject matter jurisdiction without disputing the facts alleged in the complaint, and it requires the court to 'consider the allegations of the complaint as true.'" Id. (quoting Petruska v. Gannon Univ., 462 F.3d 294, 302 n.3 (3d Cir. 2006)). A factual challenge attacks the allegations underlying the complaint's assertion of jurisdiction, "either through the filing of an answer or 'otherwise present[ing] competing facts.'" Id. (quoting Constitution Party of Pa. v. Aichele, 757 F.3d 347, 358 (3d Cir. 2014)).

The Court of Appeals for the Third Circuit has held that motions to dismiss for lack of standing are best understood as facial attacks. In re Schering Plough Corp. Intron/Temodar Consumer Class Action, 678 F.3d 235, 243 (3d Cir. 2012) ("Defendants' Rule 12(b)(1) motions are properly understood as facial attacks because they contend that the [a]mended [c]omplaints lack sufficient factual allegations to establish

standing."). In assessing a facial attack on subject matter jurisdiction under Rule 12(b)(1), courts must apply the familiar 12(b)(6) standard. Id. ("In evaluating whether a complaint adequately pleads the elements of standing, courts apply the standard of reviewing a complaint pursuant to a Rule 12(b)(6) motion to dismiss for failure to state a claim"); see also Baldwin v. Univ. of Pittsburgh Med. Ctr., 636 F.3d 69, 73 (3d Cir. 2011) ("A dismissal for lack of statutory standing is effectively the same as a dismissal for failure to state a claim."). Guided by In re Schering Plough and Baldwin, the Court finds it must apply the 12(b)(6) standard to Defendants' jurisdictional arguments.

I. Analysis

a. Failure to Show Violation of the IDEA or New Jersey Regulations by the State Defendants.

The State Defendants move to dismiss the claims that revolve around their alleged violation of the IDEA on the grounds that Plaintiffs have failed to state claims. The State Defendants argue that they have sufficient procedures in place to comply with the IDEA and Plaintiffs' complaint is really just venting their discontent with the ALJ's decision. With respect to Counts II-IX and XII, they argue that Plaintiffs have only stated conclusory claims of violation of the IDEA and New Jersey Regulations. In combatting Plaintiffs' claims, they argue that

there is no rule that a due process hearing must be conducted within ten days of a case's transmittal from the NJDOE to the OAL and that settlement is encouraged under the IDEA.

It may be true that settlement may be encouraged under the IDEA, but in so suggesting the State Defendants skirt the fact that the New Jersey Regulations do provide that the first hearing should be approximately ten days after transmittal. N.J.A.C. § 1:6A-9.1(a) ("Upon unsuccessful conclusion of the resolution process or mediation, as provided in N.J.A.C. 6A:14-2.7, the representative of the Office of Special Education Programs shall immediately contact the Clerk of the Office of Administrative Law and the Clerk shall assign a peremptory hearing date. The hearing date shall, to the greatest extent possible, be convenient to all parties but shall be approximately 10 days from the date of the scheduling call."). Plaintiffs allege that they did not receive a hearing anywhere close to ten days after the transmittal of their case to the OAL — instead they received a settlement conference. That is more than enough to state a plausible claim at this juncture.

Similarly, the State Defendant's attack on Count V alleging a violation of the adjournment rule completely misses the fact that the IDEA only allows adjournments at the request or consent of the parties and Plaintiffs allege that there was no request or consent to some of the lengthy adjournments. 34 C.F.R. §

300.515(a); (ECF 1 at 123-26).

In the same vein, Plaintiffs have adequately pled in Count IV that the procedures provided by the State Defendants did not adequately protect their discovery rights by not requiring MTBOE to provide discovery at least five days before the hearing. The State Defendants are right that there is no rule or regulation that specifically states that discovery must be exchanged five days before the hearing without exceptions. But in so arguing they miss the forest for the trees and the plain letter of the applicable regulations. The IDEA makes clear that discovery should be exchanged freely and without delay before a hearing and that such disclosure occur not closer that five days before the hearing date. See 20 U.S.C. § 1415(f)(2)(A) ("Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing."); id. at § 1415(b)(1) (the procedures put in place by the state must provide "[a]n opportunity for the parents of a child with a disability to examine all records relating to such child[.]"); 34 C.F.R. § 300.613 ("The agency must comply with a [discovery] request without unnecessary delay[.]")

New Jersey regulations mirror the federal regulations as

they should. See N.J.A.C. § 1:6A-10.1(c) ("Upon application of a party, the judge shall exclude any evidence at hearing that has not been disclosed to that party at least five business days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time."). Plaintiffs specifically identity an occasion where MTBOE provided discovery less than five days before a scheduled hearing date, they asked for the discovery to be excluded, and the ALJ improperly did not do so. (ECF 1 at 90-91).

More globally, the Court holds that Plaintiffs have adequately pleaded that the State Defendants did not enforce the rules on access to records (Count VII). The State Defendants characterize those allegations as conclusory because Plaintiffs make allegations on "information and belief." "[T]he Third Circuit has [] recognized that pleading facts upon information and belief is permitted where the factual information at issue is within the Defendants' exclusive possession and control." Wood v. State of New Jersey, 2016 WL 4544337, at *5 n.5 (D.N.J. Aug. 31, 2016) (citing In re Rockefeller Ctr. Props., Inc. Sec. Litig., 311 F.3d 198, 216 (3d Cir. 2002)). Here, Plaintiffs plead globally regarding the State Defendant's general practices that they "rarely if ever enforce a parents' rights to access their child's records even though it states that right explicitly in the due process case transmittal documents." (ECF

1 at 134). Plaintiffs would not have facts to separately plead that allegation at this stage of litigation. Further, given that Plaintiffs specifically alleged that one of the ALJs engaged in improper ex parte communications with MTBOE, it is not far-fetched to think that the State Defendants were not enforcing the rules on access to records. (See id. at 93). In addition, Plaintiffs don't solely base their claim on denial of access to records on statements pled on information and belief — they identify specific conduct by MTBOE and the State Defendants that underlies their claim. (Id. at 133-34 (stating "MTBOE violated Plaintiffs' right to access J.A.'s records in sufficient time prior to a due process hearing as guaranteed by IDEA and therefore violated the referenced Procedural Safeguard" and noting that the State Defendants did not remedy that violation)).

In addition, Plaintiffs have adequately pled that the State Defendants failed to ensure the independence of the OAL (Count XI) and that ALJs were adequately trained (Count X). The IDEA requires both that the due process hearing be conducted by an impartial hearing officer and that the state receiving federal funds under the IDEA put in place procedures to make sure that a fair hearing is conducted. 20 U.S.C. § 1415(f)(3); 34 C.F.R. § 300.511; and N.J.A.C. § 6A:14-2.7(k).

Plaintiffs have alleged that the OAL is so emmeshed in the

NJDOE that they have not been able to get a fair and impartial hearing.[7] They also have alleged that the training of the ALJs assigned to due process hearings is so lacking that it violates the requirement that the hearings be conducted by an ALJ with requisite skill and knowledge so as to be capable of rendering a timely decision. See 34 C.F.R. § 300.515(a) (states receiving federal funding "must ensure that not later than 45 days after the expiration of the 30 day period under § 300.510(b) . . . (1) A final decision is reached in the hearing; and (2) A copy of the decision is mailed to each of the parties.").

The NJDOE has the overarching responsibility to ensure that the procedures for due process hearings run smoothly without actually adjudicating disputes itself. The IDEA is organized such that the ALJs who conduct the due process hearings may not be NJDOE employees. 20 U.S.C. §1415(f)(3)(A)(i). But that very same statute makes clear that it is the NJDOE who is responsible for the infrastructure that creates such impartial due process hearings. Id. at §1415(f)(1)(A) ("Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the

[7] The State Defendants argue that the argument that ALJs receive their salaries from the NJDOE is not enough to state a claim that the OAL is not sufficiently independent. (ECF 33 at 12). Plaintiffs' allegations are more complex in that they claim the prior experience of many ALJs makes them beholden to the NJDOE and that, in addition to their salaries, the OAL is so financially intertwined with the NJDOE that there is a conflict of interest. (ECF 1 at 155-57). Plaintiffs cite statistics on the outcomes of cases to bolster their claim. (Id.)

local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.") Plaintiffs have outlined the training deficiencies of the ALJs and the ways that the OAL and the NJDOE are intertwined with sufficient facts to survive a motion to dismiss. (ECF 1 at 44 ("Upon information and belief, ALJs do not receive and NJDOE or the OAL provides adequate training or instruction on IDEA or its regulations or the New Jersey regulations, specifically the rigors of the 10 Day Peremptory Hearing Date, the Five-Day Exchange Rule, and the 45 Day Rule, and therefore do not meet IDEA's requirements for hearing officers."); id. at 155 ("Since the budget and salaries of NJDOE and OAL employees are subparts of and determined by the larger budget of the executive branch, they are beholden to the same pot of money. This creates a personal and/or professional interest that conflicts with the ALJ's objectivity in special education due process hearings.")) The Court renders no opinion as to whether these allegations will ultimately be meritorious, only that they are sufficiently pled to survive a motion to dismiss.

The State Defendants also argue that Plaintiffs have not

shown a systemic violation of the IDEA.[8] The Court disagrees. First, the State Defendants seem to be overstating the pleading standard, arguing that Plaintiffs must "demonstrate" the veracity their claims at this time. (ECF 33 at 19). Plaintiffs need only state a plausible claim. Malleus, 641 F.3d at 563. Second, to the extent that the State Defendants are suggesting that an individual plaintiff cannot prove a systemic violation, that argument misstates caselaw and fails to understand the scope of Plaintiffs' allegations. Reinholdson v. Minnesota, 346 F.3d 847, 851 (8th Cir. 2003) ("[T]rials of those individual claims may expose issues of systemic violation[.]") The touchstone of a systemic violation is that it cannot be remedied by the administrative process because the issue is so pervasive. Brach v. Newsom, 2020 WL 6036764, at *8 (C.D. Cal. Aug. 21, 2020) ("A plaintiff alleging a systemic violation is not entitled to an exception if "it involves only a substantive claim having to do with limited components of a program, and if the administrative process is capable of correcting the problem.") Plaintiffs have alleged that the problems in how their due process matter was handled are rooted in such widespread deficiencies that the system in place is incapable of remedying their concerns. (See ECF 1at 50). Discovery on their

[8] The State Defendants do not clearly tie this argument to any given count and seem to be making a more global point about the pleading of systemic violations. (ECF 33 at 19-21).

individual matter certainly could bear out their concerns.

b. Whether Plaintiffs' IDEA Claims Against State Officials Must be Dismissed.

The State Defendants' argument that the counts alleging violation of the IDEA against state officials must be dismissed because the IDEA does not allow claims against individual officials has some support in case law. See Taylor v. Altoona Area Sch. Dist., 513 F. Supp. 2d 540, 553 (W.D. Pa. 2007) (discussing the IDEA and stating, "The United States Court of Appeals for the Third Circuit has recognized that Congress does not normally seek to impose liability on individuals when it places conditions on the receipt of federal funds by entities that employ such individuals.") (citing Emerson v. Thiel College, 296 F.3d 184, 190 (3d Cir.2002)); R.S. v. Glen Rock Bd. of Educ., No. 14-CV-0024 SRC, 2014 WL 7331954, at *5 (D.N.J. Dec. 19, 2014).

That said, this Court acknowledges that "in many circumstances it is appropriate for a plaintiff to assert IDEA and Rehabilitation Act claims against individuals in their 'official capacities' as school administrators, school district personnel, or school board members[.]" New Jersey Prot. & Advoc., Inc. v. New Jersey Dep't of Educ., 563 F. Supp. 2d 474, 492 (D.N.J. 2008). To be sure, the court in New Jersey Prot. & Advoc., Inc. did dismiss the claims against the individuals

named in their official capacities as duplicative of the claims against the state. Id. It may indeed be the case that such claims will turn out to be duplicative in this matter, but at this early stage in litigation, the Court is not prepared to dismiss the claims against the individual defendants on this ground. With the scope of the liability, if any, that may actually fall to the NJDOE and the OAL unresolved at this point in litigation, the Court will not dismiss the claims against the individual defendants as duplicative. P.V. ex rel. Valentin v. Sch. Dist. of Philadelphia, 2011 WL 5127850, at *12 (E.D. Pa. Oct. 31, 2011) ("While some courts have dismissed claims against individual, official capacity defendants as redundant, they have done so after satisfying themselves that the remaining entity defendant(s) were willing to take responsibility for the individual defendants' action.")

c. Whether the ALJs Are Entitled to Judicial Immunity.

The State Defendants argue that the ALJs sued in this matter are protected by judicial immunity and the Court agrees. Plaintiffs' principal argument against this is that the law does not recognize judicial immunity for state ALJs. (ECF 36 at 18-19). At least one panel of the Third Circuit has recognized judicial immunity for a state official acting in the capacity of an ALJ. Savadjian v. Caride, 827 F. App'x 199, 202 (3d Cir. 2020). In addition, judicial immunity as a doctrine has been

understood to broadly insulate judicial officers for their acts taken in a judicial capacity. See Kaul v. Christie, 372 F. Supp. 3d 206, 246 (D.N.J. 2019) ("Absolute judicial immunity applies to all claims, whether official-capacity or personal-capacity, that are based on judicial acts," which includes administrative law judges, and the immunity is only stripped for "nonjudicial actions" and "actions, though judicial in nature, taken in the complete absence of all jurisdiction.") (citing Mireles v. Waco, 502 U.S. 9, 12 (1991); Dongon v. Banar, 363 F. App'x 153, 155 (3d Cir. 2010); Raffinee v. Comm'r of Soc. Sec., 367 F. App'x. 379, 381 (3d Cir. 2010) (citing Butz v. Economou, 438 U.S. 478, 514 (1978)). Accordingly, the claims against the ALJs will be dismissed with prejudice. Thompson v. Cobham, 2012 WL 2374724, at *2 (D.N.J. 2012) (citing Gary v. Gardner, 445 F. App'x 465, 467 (3d Cir. 2011) (affirming dismissal with prejudice of action barred by judicial immunity)).

d. Whether Plaintiffs' § 1983 Claims Must Be Dismissed.

The Court will dismiss the claims under § 1983 against the NJDOE and the OAL with prejudice[9] because they are arms of the

[9] District courts "should freely give leave to amend when justice so requires." Schomburg v. Dow Jones & Co., 504 F. App'x 100, 103 (3d Cir. 2012) (citing Rule 15(a)(2)) (internal alterations omitted). "Thus, leave to amend ordinarily should be denied only when amendment would be inequitable or futile." (Id.) "[T]hese principles apply equally to *pro se* plaintiffs and those represented by experienced counsel." Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004). "Futility 'means that the complaint,

state, and the state as not waived its Eleventh Amendment immunity. Docherty v. Cape May Cty., 2017 WL 3528979, at *4 (D.N.J. Aug. 15, 2017) ("Thus, the Court dismisses the § 1983 and NJCRA claims for damages against Lanigan in his official capacity, based on Eleventh Amendment immunity."); Rashid v. Lanigan, 2018 WL 3630130, at *10 (D.N.J. July 31, 2018) ("Plaintiffs' claims seeking declaratory relief as to, and monetary damages from, Defendants in their official capacities are dismissed with prejudice as barred by Eleventh Amendment immunity[.]")

And courts in this district have made clear that the NJDOE and the OAL are arms of the state for Eleventh Amendment purposes. Wright v. New Jersey/Dep't of Educ., 115 F. Supp. 3d 490, 494 (D.N.J. 2015) ("The Department of Education is considered an arm of the state government for purposes of

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as amended, would fail to state a claim upon which relief could be granted.'" Burtch v. Milberg Factors, Inc., 662 F.3d 212, 231 (3d Cir. 2011) (quoting Great W. Mining & Min. Co. v. Fox Rothschild LLP, 615 F.3d 159, 175 (3d Cir. 2010)). Courts have held amendment to be inequitable where the plaintiff already had an opportunity to amend the complaint. Lake v. Arnold, 232 F.3d 360, 374 (3d Cir. 2000) ("[W]e are inclined to give the District Court even broader discretion when, as here, the court has already granted the requesting party an opportunity to amend its complaint."); McMahon v. Refresh Dental Mgmt., LLC, 2016 WL 7212584, at *11 (W.D. Pa. Dec. 13, 2016) ("The court need not provide endless opportunities for amendment, especially where such opportunity already has been enjoyed.") (internal alterations and quotation marks omitted). Here the Eleventh Amendment serves as an absolute bar and amendment of the claims would be futile.

determining sovereign immunity under the Eleventh Amendment."); ASAH v. New Jersey Dep't of Educ., 2017 WL 2829648, at *7 (D.N.J. June 30, 2017) ("For the purposes of the Eleventh Amendment, the DOE is an arm of the state government."); Rodrigues v. Fort Lee Bd. of Educ., 458 F. App'x 124, 127 (3d Cir. 2011) ("The Office of Administrative Law is a state agency. . . and is thus immune from suit under the Eleventh Amendment[.]"). Because Eleventh Amendment immunity bars Plaintiffs' claims against the NJDOE and the OAL, the Court will dismiss that count without leave to amend.

The Court will not, however, dismiss the claim against the Commissioner at this time. An exception to the Eleventh Amendment is a suit against an official in their official capacity seeking prospective injunctive relief. While not pleaded artfully, Plaintiffs' complaint essentially asks the Court to remedy the procedural problems with the dispute resolution system so that Plaintiffs can get a fair result as required under the law and perhaps bring other claims. (See ECF 1 at 189("Defendants have denied Plaintiffs their right to timely assert other claims because of the delays and systemic flaws.")) Where there is an ongoing violation of federal law and the relief is prospective, the Court may order it. Delaware River Joint Toll Bridge Comm'n v. Sec'y Pennsylvania Dep't of Lab. & Indus., 985 F.3d 189, 193-94 (3d Cir. 2021), cert. denied

sub nom. Berrier v. Delaware River Joint Toll Bridge Comm'n, 142 S. Ct. 109 (2021) (determining whether to grant the relief "requires us to 'conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law' and whether it 'seeks relief properly characterized as prospective.'") (quoting Verizon Md., Inc. v. Pub. Serv. Comm'n of Md., 535 U.S. 635, 645 (2002)).

While the State Defendants are correct that the IDEA does not allow Plaintiffs to use the IDEA to use § 1983 to remedy violations of the IDEA, it does not bar suit under § 1983 based on separate substantive rights. First, 20 U.S.C. § 1416(*l*) states:

> Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

Subsection (*l*) specifically leaves open the avenue for plaintiffs to sue based on other substantive laws if the relief sought was distinct from what is available under the IDEA. A.W. v. Jersey City Pub. Schs., 486 F.3d 791, 798 (3d Cir. 2007) ("By preserving rights and remedies "under the Constitution," section 1415 [(*l*)] does permit plaintiffs to resort to section

1983 for *constitutional* violations, notwithstanding the similarity of such claims to those stated directly under IDEA.") (emphasis in original). Even though Plaintiffs mention provisions of the IDEA as background for their § 1983 claim, they cite to the Fourteenth Amendment as the underlying basis.[10] (ECF 1 at 189). Courts have held that there is a property interest in education and that therefore, prior to the deprivation of such interest, a plaintiff must be provided with a meaningful opportunity to be heard prior to the deprivation in order to comport with the Fourteenth Amendment. Hamilton v. Radnor Twp., 502 F. Supp. 3d 978, 990 (E.D. Pa. 2020) ("The Fourteenth Amendment creates a guarantee of fair procedure whereby an individual can assert that she was deprived of a life, liberty, or property interest without due process of law.") (internal quotation marks omitted); Garcia v. Capistrano Unified Sch. Dist., 2018 WL 6017009, at *12 (C.D. Cal. Mar. 30, 2018) ("Further, a plaintiff can bring a Section 1983 action alleging the deprivation of procedural due process in state special education administrative proceedings."); K.A. ex rel. J.A. v. Abington Heights Sch. Dist., 28 F. Supp. 3d 356, 367 (M.D. Pa. 2014) (noting property interest in public education); Abernathy v. Indiana Univ. of Pennsylvania, 2013 WL 3200519, at

[10] For reason that are unclear, Plaintiffs also cite to the Fourth Amendment without further elaboration. And such claim will be dismissed without prejudice.

*1 (W.D. Pa. June 18, 2013) (noting the need for a meaningful opportunity to be heard before the deprivation of education); Dommel Properties, LLC v. Jonestown Bank & Tr. Co., 2013 WL 1149265, at *9 (M.D. Pa. Mar. 19, 2013) ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner."). Thus, maintaining a separate claim under the Fourteenth Amendment to be vindicated via § 1983 is in accordance with § 1415(*l*) so long as the claim is ripe.[11]

e. Violation of § 504 and the ADA.

The NJDOE also moves to dismiss Count XVII, violation of § 504, and Count XVIII, violation of the ADA. They argue that dismissal of Counts XVII and XVIII is appropriate because "Plaintiffs do not allege that State Defendants excluded J.A. from a service, program or activity because of J.A.'s disability." (ECF 33 at 34). Plaintiffs counter that the State Defendants retaliated against them for seeking to enforce J.A.'s education rights by reassigning her case several times and not enforcing the timing required by law for the progression of her

[11] See C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 73 n.13 (3d Cir. 2010) ("As a matter of chronology, a state administrative complaint could not seek relief for a due process violation that had not yet occurred. Thus, any claim for deprivation of procedural due process in the state administrative proceedings cannot be redressed by the remedial provisions of the IDEA; the aggrieved party must file a separate § 1983 action in the District Court, supported by appropriate factual allegations.").

cases. (ECF 36 at 27).

To state a claim of violation Title II of the ADA or § 504, "a plaintiff must show that he is a qualified individual with a disability; that he was excluded from a service, program, or activity of a public entity; and that he was excluded because of his disability." Disability Rts. New Jersey, Inc. v. Comm'r, New Jersey Dep't of Hum. Servs., 796 F.3d 293, 301 (3d Cir. 2015); Furgess v. Pennsylvania Dep't of Corr., 933 F.3d 285, 288 (3d Cir. 2019) (noting that the substantive standards for both claims are the same). The parties do not appear to dispute that J.A. is a qualified individual with a disability. Rather, the crux of the dispute is whether Plaintiffs were deprived of something they otherwise were entitled to as a result of J.A.'s disability. The complaint clearly outlines the NJDOE and OAL's responsibilities to provide impartial due process hearings and that, for instance, "[u]pon information and belief, ALJ Wilson issued the May 1, 2018 Order out of spite and in retaliation for Plaintiffs asserting objections based on the 45 Day Rule." (ECF 1 at 86). This, with the rest of the allegations in the complaint, is enough to satisfy the Court that Plaintiffs are entitled to proceed with their ADA and § 504 claims.

Indeed, the Supreme Court has noted that an action may lie for violation of the ADA and § 504 where the facts arise out of an alleged violation of the IDEA. Fry v. Napoleon Cmty. Sch.,

137 S. Ct. 743, 750, 197 L. Ed. 2d 46 (2017) ("[T]he IDEA does not prevent a plaintiff from asserting claims under such laws even if. . . those claims allege the denial of an appropriate public education (much as an IDEA claim would)."). Plaintiffs' complaint alleges that the NJDOE's flawed procedures pervaded the dispute resolution system to the extent that they effectively barred J.A. from receiving the same educational benefits as other children and retaliated against Plaintiffs for trying to assert their rights. (See ECF 1 at 89).

The State Defendants characterize the allegations of violation of § 504 and the ADA as conclusory, focusing on statements like the above-quoted allegations. Plaintiffs certainly could have pled their claims more artfully, neatly tying together how the State Defendants' flawed procedures constituted discrimination or some sort of disparate impact in compact phraseology. But this Court reads the allegations in the complaint as a whole and the allegations read in that light tell a story of due process procedures so deficient that Plaintiffs were not able to place their child in the right educational setting or seek relief without retaliation, a benefit that non-disabled children were readily receiving. Destro v. Hackensack Water Co., 2009 WL 3681903, at *2 (D.N.J. Nov. 2, 2009) ("The Court must consider the Complaint in its entirety and review the allegations as a whole and in context.")

Thus, the Court will not dismiss the claims based on § 504 and the ADA.

f. Whether Federal Preemption Applies.

Plaintiffs assert a count for "federal preemption", contending that there "is a direct conflict between the scheme under federal IDEA law for resolving special education disputes and NJDOE's system under the New Jersey Administrative Code for how New Jersey handles special education disputes as discussed at length in preceding allegations of this Complaint." (ECF 1 at 168.) The State Defendants argue that Plaintiffs' contention that the briefing schedule for motions and the refusal by State Defendants to enforce the 10 day Peremptory Hearing regulation both directly conflict with the IDEA fails because neither conflicts with the IDEA. The State Defendants argue that the IDEA and New Jersey regulations do not provide for guidelines regarding motion practice in due process hearings, and the 10-day rule is not contained in the IDEA. Thus, the State Defendants argue that the IDEA cannot preempt state law on these issues.

The Court finds that any conflicts between the State's procedures as they relate to the IDEA will be more appropriately resolved after discovery regarding those procedures as a whole, and a fuller record is provided upon which this Court may opine on the viability of Plaintiffs' federal preemption count. See,

e.g., Virtual Studios v. Couristan, Inc., 2011 WL 1871106, at *3 (D.N.J. 2011) (denying the defendant's argument that the plaintiff's state law claim was preempted by federal copyright law because the court was required to perform a qualitative analysis to make that determination, and finding that it would be in a far better position to make such a qualitative assessment once the record in the matter had been more fully developed, rather solely on the plaintiff's complaint).

g. Whether Plaintiffs' Claim for Malicious Abuse of Process May Proceed.

The State Defendants contend that Plaintiffs' state law claim for malicious abuse of process necessarily fails because it is barred by the Eleventh Amendment. Plaintiffs argue that that it is so intertwined with the federal issues in this case that the Court may exercise supplemental jurisdiction over it. Plaintiffs miss the mark in making that argument. "[T]he supplemental jurisdiction statute, 28 U.S.C. § 1367, does not authorize district courts to exercise jurisdiction over claims against non-consenting States." Balsam v. Sec'y of New Jersey, 607 F. App'x 177, 183 (3d Cir. 2015). Further, the Supreme Court has made clear that the carveout in Ex parte Young, 209 U.S. 123, 159, 28 S. Ct. 441, 454, 52 L. Ed. 714 (1908) that allows suit against state officials for ongoing violations of federal law does not extend to claims based on state law.

Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 106, 104 S. Ct. 900, 911, 79 L. Ed. 2d 67 (1984) ("We conclude that *Young* and *Edelman* are inapplicable in a suit against state officials on the basis of state law.") Thus, the Court will dismiss Count XX against the State Defendants with prejudice.

h. Whether Plaintiffs' Legal Error Claims Must be Dismissed.

The State Defendants are correct that a pure claim based on legal error is more appropriately handled as an appeal than as a separate count. The provision of the IDEA allowing appeal of the prior decision is clear that the scope of any appeal of the underlying action is cabined to what was in the due process complaint. 20 U.S.C.A. § 1415(h)(2)(A) ("Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.").

Essentially, § 1415(h)(2)(A) makes clear that a party appealing the result of a due process proceeding must base that appeal on the underlying complaint filed in that proceeding. To

be clear, this Court does not hold that Plaintiffs may not separately sue the State Defendants for conduct related to the handling of that proceeding, as they have done here. Rather, the scope of a substantive appeal does not pertain directly to the conduct of the State Defendants. Thus, the Court will dismiss Count II.

CONCLUSION

For the reasons expressed in this Opinion, the State Defendants' motion to dismiss (ECF 33) will be granted in part and denied in part.

An appropriate Order will be entered.

Date: March 30, 2022
At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.